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**FEB 21 2008**

In re Application of	:	
Barney P. Johnson	:	DECISION ON PETITION TO
Application Number: 10/729481	:	WITHDRAW HOLDING OF
Filing Date: 12/05/2003	:	ABANDONMENT
Attorney Docket Number:	:	
11929.001	:	

This is a decision on the petition to withdraw the holding of abandonment filed on January 15, 2008.

The petition is **GRANTED**.

The application was held abandoned on October 6, 2007, for failure to timely respond to the non-final Office action mailed on July 5, 2007, which set a three (3) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on January 8, 2008.

Petitioner alleges that the an amendment in response to the non-final Office action mailed on July 5, 2007, was deposited in "Express Mail" service with the U.S. Postal Service on August 30, 2007. In support, petitioner has supplied a copy of Express Mail label no. EB251860503US (the same Express Mail number found on the first page of the amendment and response). The Express Mail label contains a "date-in" of "8 30 07". A duplicate copy of the amendment and response has also been supplied.

37 CFR 1.10(c) states:

Any person filing correspondence under this section that was received by the Office and delivered by the

"Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Director to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
- (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

The Office considers the date the paper or fee is shown to have been deposited as "Express Mail" to be the "Date In", or other evidence from the USPS on the Express Mail label.<sup>1</sup> That is the date that verifies that the package was actually mailed. In view of the above, the showing of record is that the correct date of deposit in Express Mail of the amendment in response to the non-final Office action mailed on July 5, 2007, is August 30, 2007.

In view of the above, the petition is granted. No petition fee is required.

As petitioners have provided convincing evidence that a response to the non-final Office action mailed on July 5, 2007, was filed on August 30, 2007, the showing of record is that a response was timely filed, and there is no abandonment in fact. Any inconvenience caused to applicant is regretted.

The holding of abandonment is withdrawn, and the Notice of Abandonment is vacated.

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<sup>1</sup> MPEP 513.

The application is being referred to Technology Center Art Unit 2624 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



Douglas I. Wood  
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Office of Petitions